

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

FASHION GROUP, LLC, et al., :  
Plaintiffs, : 18-CV-02959 (PGG)  
v. : 500 Pearl Street  
JOHNNY'S SIGNATURE, INC., et al., : New York, New York  
Defendant. : October 28, 2019  
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TRANSCRIPT OF CIVIL CAUSE FOR SETTLEMENT CONFERENCE  
BEFORE THE HONORABLE BARBARA C. MOSES  
UNITED STATES MAGISTRATE JUDGE

## APPEARANCES:

For the Plaintiff: JONATHAN FAUST, ESQ.  
1411 Broadway  
New York, New York 10018

For the Defendants: HARLAN LAZARUS, ESQ.  
Lazarus & Lazarus  
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New York, New York 10016

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1                   THE CLERK: Fashion Group LLC v. Johnny's Signature,  
2 Inc., et al., Docket No. 18-CV-2959.

3                   Counsel and parties, state your appearance for the  
4 record.

5                   MR. FAUST: John Faust for all plaintiffs, Fashion  
6 Group, Fungyun and NYC Alliance, Your Honor. Good afternoon.

7                   THE COURT: And introduce now that we're on the  
8 record, please, your client.

9                   MR. FAUST: My client is Josh Gelder who is the COO  
10 of various plaintiff entities and executive officer of each  
11 entity.

12                  THE COURT: Thank you. Welcome back. Be seated.  
13 Who's next?

14                  MR. LAZARUS: Good afternoon, Your Honor. Harlan  
15 Lazarus for Johnny's Signature, Inc., Johnny's Signature  
16 International, Inc., Deepak Sajnani, Jerry Lau and Double Top  
17 International, Inc. Mr. Sajnani who is seating to the  
18 right --

19                  THE COURT: My left, your right.

20                  MR. LAZARUS: Your left, yes. Is here for himself  
21 and the Johnny corporate defendants and Mr. Lau who is seated  
22 to your right is here for himself and for Double Top.

23                  THE COURT: Thank you very much.

24                  MR. KORNFIELD: Good afternoon, Your Honor. Randy  
25 Kornfeld for Bilco Import and Export, Inc., Bilco Industries,

1 Inc. and Burton Chen, also known as Billy Chen. Billy Chen --

2 THE COURT: And Mr. Chen is with you?

3 MR. KORNFELD: Yes, he is, Your Honor.

4 THE COURT: Welcome back all of you. Counsel, be  
5 seated. As you know, we are now on the record here making an  
6 electronic recording for the purpose of memorializing the  
7 material terms of a settlement agreement that the parties tell  
8 me they have now reached after a series of negotiations  
9 culminating with negotiations here in the Monighan Courthouse  
10 over the course of this afternoon.

11 So what I would do is I will ask plaintiff's  
12 counsel, Mr. Faust, to state the material terms of the  
13 agreement. I will then ask the other attorneys if they concur  
14 that Mr. Faust has accurately stated the material terms. Once  
15 we get agreement on what the material terms are I will ask  
16 each of the parties in turn both on their individual behalfs  
17 to the extent that they are individual plaintiffs or  
18 defendants and on behalf of the entities for which they have  
19 authority whether they understand the terms, whether they  
20 agree to settle the terms, and I will ask -- settle on these  
21 terms I should say, and as I explained to counsel before we  
22 went on the record I will ask each of the client  
23 representatives here to confirm your understanding that  
24 although the lawyers have not yet reduced the settlement  
25 agreement to a formal written document you are entering into,

1 you will be entering into a binding and enforceable contract  
2 subject to its terms here this afternoon.

3 So with that introduce, Mr. Faust.

4 MR. FAUST: Thank you and good afternoon, Your  
5 Honor. Before I get into the material terms I would like to  
6 thank Your Honor for your patience and repeated indulgence of  
7 the parties and this process and the opportunity to come in I  
8 think was very helpful in getting us to where we are right  
9 now.

10 I will endeavor to set forth the material terms and  
11 counsel can certainly point where I err.

12 First, for a period of one year no defendant will  
13 directly or indirectly own an interest in a company doing  
14 business in the sweater portion of the apparel industry.  
15 Plaintiffs will get an exclusive right to sell the  
16 approximately 734,809 units of goods identified in the  
17 attachment to the October 22, 2019 email from Attorney Lazarus  
18 to myself provided, however, the defendants and their factor  
19 also have the right to try and sell the goods.

20 Plaintiff will earn a commission on the sales  
21 pursuant to agreed -- an agreed commission schedule which I  
22 will lay out in a moment. Plaintiffs will get the commission  
23 whether they sell the goods or whether the defendant or the  
24 factor sells the goods.

25 The October 22, 2019 attachment from Attorney

1 Lazarus included LDP pricing for the goods and the commission  
2 schedule --

3 THE COURT: LDP for us laymen is landed duty price;  
4 correct?

5 MR. FAUST: That is correct, Your Honor.

6 THE COURT: Thank you.

7 MR. FAUST: The commission is if the good are sold  
8 at LDP or better. It's a 20 percent commission. If the sale  
9 price is at 75 to 99 percent of LDP it's a 15 percent  
10 commission. If the sale price is 50 to 74 percent of LDP it's  
11 a ten percent commission if the plaintiffs sell the goods but  
12 a five percent commission if the defendants or their factor  
13 sells the goods. And there's a five percent commission on any  
14 price below 50 percent. Defendants have the right --

15 THE COURT: Below 50 percent of the LDP?

16 MR. FAUST: The LDP yes, Your Honor.

17 THE COURT: Thank you.

18 MR. FAUST: And the defendants have the right to  
19 approve the sale, for any sale where the price is 74 percent  
20 or lower. 74 percent of LDP or lower.

21 The plaintiffs are not taking possession, custody or  
22 control of the goods in any way. All that remains with the  
23 defendants who will warehouse and distribute the goods  
24 pursuant to any sale. The defendants will provide all  
25 necessary releases and waivers to enable the sale.

1           These terms are subject to the defendant's factor's  
2 approval. The agreement is to last until January --

3           THE COURT: And the defendant's factor is -- give me  
4 the name again. BHA, which stands for --

5           MALE VOICE: Bank [inaudible] International.

6           THE COURT: That's an Israeli bank; right?

7           MR. LAZARUS: Yes, it is, Your Honor.

8           THE COURT: Thank you.

9           MR. FAUST: So the agreement will last until January  
10 31st provided, however, if the -- if the defendant's factor  
11 does not foreclose on the inventory that's subject to this  
12 agreement by that date the parties will negotiate in good  
13 faith for an extension of the agreement for a term --  
14 commercially reasonable amount of time for plaintiffs to  
15 endeavor to sell the goods.

16           The other terms will be memorialized in writing as  
17 well. They include a mutual non disparagement and mutual  
18 general releases.

19           THE COURT: But no confidentiality clause; correct?

20           MR. FAUST: That is correct, Your Honor.

21           THE COURT: The case will be dismissed by  
22 stipulation once the formal written documents have been fully  
23 executed and the factor's consent obtained?

24           MR. FAUST: That is correct, Your Honor.

25           THE COURT: Thank you, Mr. Faust. Let me turn to

1 Mr. Lazarus. Anything to add or clarify to that list of  
2 material terms?

3 MR. LAZARUS: Just a clarification, Your Honor.  
4 They had mentioned in Chambers that the -- Johnny corporate  
5 defendants as well as the bank can only sell through agents  
6 because they're not in business of selling sweaters at all.  
7 So yes, it's exclusive in the sense that we're not going to  
8 pull out and wholesale [inaudible] rep to sell the stuff but  
9 there will be agents involved [inaudible] bank and also --

10 THE COURT: So you're saying that if your clients or  
11 the factor BHA sell the goods themselves they'll retain an  
12 agent to assist them in that but do I understand correctly  
13 that plaintiffs will still get the agreed upon commission to  
14 the extent it's applicable?

15 MR. LAZARUS: Yes, that's a hundred percent correct.

16 THE COURT: And you agree, Mr. Faust?

17 MR. FAUST: Yes, Your Honor.

18 THE COURT: Mr. Kornfeld, do you have anything to  
19 add?

20 MR. KORNFIELD: Nothing to add, Your Honor.

21 THE COURT: Let me begin then with Mr. Gelder. If  
22 you could just pull the microphone closer to you. Mr. Gelder,  
23 you are not personally a plaintiff or a defendant in this  
24 action but you are here as a representative of Fashion Group,  
25 LLC, Fungyun, Inc. and NYC Alliance Company, LLC; is that

1 correct?

2 MR. GELDER: That is correct.

3 THE COURT: What is your position with those  
4 entities?

5 MR. GELDER: The chief operating officer.

6 THE COURT: With respect to all of them?

7 MR. GELDER: For NYC Alliance.

8 THE COURT: Are you authorized to negotiate and  
9 settle on behalf of all three of them?

10 MR. GELDER: Yes, I am.

11 THE COURT: Very well. Did you hear and do you  
12 understand the material terms of the proposed settlement  
13 placed on the record by counsel?

14 MR. GELDER: Yes, I do.

15 THE COURT: On behalf of Fashion Group, LLC, do you  
16 agree to settle this case on those terms?

17 MR. GELDER: Yes, I do.

18 THE COURT: On behalf of Fungyun, Inc., do you agree  
19 to settle this case on those terms?

20 MR. GELDER: Yes, I do.

21 THE COURT: On behalf of NYC Alliance Company, LLC,  
22 do you agree to settle this case on those terms?

23 MR. GELDER: Yes, I do.

24 THE COURT: Do you understand that although the  
25 terms have not yet been reduced to a formal written settlement

1 agreement you on behalf of those three corporate entities are  
2 entering into a binding and enforceable contract of settlement  
3 this afternoon?

4 MR. GELDER: Yes, I do.

5 THE COURT: Thank you very much. Let me now turn to  
6 the Johnny's entities. That would be Mr. Sajnani speaking for  
7 those entities; correct?

8 MR. SAJNANI: Yes.

9 THE COURT: So just step forward right where you are  
10 is perfect so I can hear you. You are Deepak Sajnani, also  
11 known as Johnny Sajnani?

12 MR. SAJNANI: Correct.

13 THE COURT: And you are individually a defendant in  
14 this case and you are also I take a principal of Johnny's  
15 Signature, Inc. and Johnny's Signature International, Inc.

16 MR. SAJNANI: Yes, ma'am.

17 THE COURT: What is your position with those two  
18 companies?

19 MR. SAJNANI: I'm the president and the owner of the  
20 company.

21 THE COURT: Both of them?

22 MR. SAJNANI: Yes, ma'am.

23 THE COURT: So you're authorized to enter into a  
24 settlement agreement on their behalf?

25 MR. SAJNANI: Yes, ma'am.

1                   THE COURT: All right. Did you hear and understand  
2 the material terms of the settlement placed on the record by  
3 counsel?

4                   MR. SAJNANI: Yes, I do, ma'am.

5                   THE COURT: On behalf of yourself, Mr. Sajnani, do  
6 you agree to settle this case on those terms?

7                   MR. SAJNANI: Yes, I do, ma'am.

8                   THE COURT: Do you need some water?

9                   MR. SAJNANI: No, I'm okay.

10                  THE COURT: You're okay. On behalf of Johnny's  
11 Signature, Inc., do you agree to settle this case on those  
12 terms?

13                  MR. SAJNANI: Yes, I do, ma'am.

14                  THE COURT: And on behalf of Johnny's Signature  
15 International, Inc., do you agree to settle this case on those  
16 terms?

17                  MR. SAJNANI: Yes, I do, ma'am.

18                  THE COURT: Do you understand that although the  
19 lawyers have not yet prepared formal written settlement  
20 documentation you are entering into an enforceable and binding  
21 settlement agreement this afternoon?

22                  MR. SAJNANI: Yes, I do, ma'am.

23                  THE COURT: Thank you very much. Let's go to the  
24 Bilco entities. That would be Mr. Chen.

25                  MR. CHEN: Yes.

1                   THE COURT: You are Burton Chen also known as Billy  
2 Chen?

3                   MR. CHEN: Yes. Burton Chen actually my son.

4                   THE COURT: You are then Billy Chen incorrectly  
5 named as Burton Chen?

6                   MR. CHEN: No. They put it on the case. So I don't  
7 know.

8                   THE COURT: Are you here as an individual defendant  
9 in this action and as a representative of the Bilco entities?

10                  MR. CHEN: Yes.

11                  THE COURT: Very well. What is your position at  
12 Bilco Import and Export, Inc.?

13                  MR. CHEN: President.

14                  THE COURT: What is your position at Bilco  
15 Industries, Inc.?

16                  MR. CHEN: President.

17                  THE COURT: Are you therefore authorized to settle  
18 this case on their behalf?

19                  MR. CHEN: Yes.

20                  THE COURT: Did you hear and do you understand the  
21 material terms of the settlement placed on the record by  
22 counsel?

23                  MR. CHEN: Yes.

24                  THE COURT: On behalf of Bilco Import and Export, do  
25 you agree to settle this case on those terms?

1 MR. CHEN: Yes.

2 THE COURT: On behalf of Bilco Industries, Inc., do  
3 you agree to settle this case on those terms?

4 MR. CHEN: Yes.

5 THE COURT: On behalf of yourself do you agree to  
6 settle this case on those terms?

7 MR. CHEN: Yes.

8 THE COURT: Do you also recognize that although the  
9 formal written agreement has not yet been prepared you're  
10 entering into a binding contract of settlement this afternoon?

11 MR. CHEN: Yes.

12 THE COURT: Thank you very much. That leaves Mr.  
13 Lau and Double Top International. Step up, Mr. Lau.

14 MR. LAU: Yes.

15 THE COURT: You are Jerry Lau?

16 MR. LAU: Yes.

17 THE COURT: Are you also here on behalf of Double  
18 Top International, Inc.?

19 MR. LAU: President.

20 THE COURT: You are the president of Double Top?

21 MR. LAU: Yeah.

22 THE COURT: Did you hear and understand the material  
23 terms of the settlement placed on the record by counsel?

24 MR. LAU: Yes, I do.

25 THE COURT: Are you authorized to settle this case

1 on behalf of Double Top?

2 MR. LAU: Yes.

3 THE COURT: On behalf of Double Top, do you agree to  
4 settle this case on those terms?

5 MR. LAU: Yes.

6 THE COURT: And on behalf of yourself, do you agree  
7 to settle this case on those terms?

8 MR. LAU: Yes.

9 THE COURT: Do you recognize that -- do you  
10 acknowledge that although there is not yet a formal written  
11 document you are entering into a binding agreement?

12 MR. LAU: Yes.

13 THE COURT: Thank you very much. You may be seated.

14 Gentlemen, I believe that concludes our business  
15 this evening. Either I or Judge Garaufis will issue in all  
16 likelihood a 30 day dismissal order. If you need more than 30  
17 days to get your settlement documentation finalized and a  
18 stipulation of settlement filed don't wait until the last day.  
19 Ask for an extension as soon as you know you need it.

20 Any questions?

21 MR. FAUST: None, Your Honor.

22 THE COURT: We'll be adjourned. Thank you.

23 MR. FAUST: Thank you.

24 MR. KORNFIELD: Your Honor, thank you. I do as  
25 counsel did I want to thank the Court, the Court's staff for

1 all of the assistance and courtesies.

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1        I certify that the foregoing is a court transcript from  
2 an electronic sound recording of the proceedings in the above-  
3 entitled matter.

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5        Shari Riemer

6        Shari Riemer, CET-805

7        Dated: October 31, 2019

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